

**STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105**

[REDACTED] 2022
Signature confirmation

Case: [REDACTED]
Client: [REDACTED]
Request: 187034

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2021, the Department of Social Services (the "Department") issued a *Notice of Action* to [REDACTED] (the "Appellant") determining that she was eligible to participate in the state-funded Connecticut Home-Care Program for the Elderly ("CHCPE")¹ effective [REDACTED] 2021, with a patient liability amount (or applied income) of \$1,562.48 per month effective [REDACTED] 2021.

On [REDACTED] 2021, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") received a [REDACTED] 2021 postmarked hearing request signed by [REDACTED], the Appellant's daughter and attorney-in-fact.

On [REDACTED] 2021, the OLCRAH scheduled an administrative hearing for [REDACTED] 2022.

On [REDACTED] 2021, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing. The Appellant's daughter and attorney-in-fact represented the Appellant's interests at the administrative hearing. The following individuals participated:

[REDACTED], Appellant's Attorney-in-Fact (daughter)
Stephen Percy, Department Representative

¹ Throughout the [REDACTED] 2022 hearing record, the Department used different terms to designate the same program. The Department's Exhibits referred to the state-funded program as the "Connecticut Home Care Program for the Elderly (non-Medicaid)," "Connecticut Home Care Program for Elders," "ALSA (Assisted Living Services/Agency)," and "M03 Cat 2." "Patient liability amount" and "applied income" were also used interchangeably.

Amelia Duarte, Department Representative
Eva Tar, Hearing Officer

On [REDACTED] 2022, the hearing record closed.

STATEMENT OF ISSUE

The issue is whether the Department correctly determined the amount of the Appellant's monthly patient liability amount (or applied income) as a participant of the state-funded CHCPE, effective [REDACTED] 2021.

The Appellant also petitions for a grant of CHCPE coverage and/or services retroactive to [REDACTED] 2021.

FINDINGS OF FACT

1. The Appellant resides in [REDACTED] an assisted living facility. (Appellant Attorney-in-Fact Testimony) (Department Exhibit 7) (Appellant Exhibit A)
2. The Appellant is privately paying [REDACTED] in excess of \$7,000.00 per month. (Appellant Exhibit A)
3. On or around [REDACTED] 2021, the Department received the Appellant's application for home care services, signed [REDACTED] 2021. (Department Exhibits 3, 4, and 5)
4. In 2021, the Appellant's gross monthly income from Social Security (\$1,641.50), Veterans' Benefits (\$1,244.00), and private retirement pension (\$972.48) equaled \$3,857.98. (Department Exhibit 8)
5. In 2021, the Appellant's Medicare B premium equaled \$148.10 per month. (Department Representative Testimony)
6. In 2021, the Appellant paid \$261.00 per month for an [REDACTED] supplemental medical insurance policy. (Appellant's Attorney-in-Fact Testimony)
7. In [REDACTED] 2021, [REDACTED] charged the Appellant \$7,170.00 total for that month for a Basic Residency Fee: Assisted Living-Daily (\$3,780.00); Service Package: Traditional II (\$2,520.00); and Medication: Traditional Med Level II (\$840.00). (Appellant Exhibit A)
8. In [REDACTED] 2021, the Appellant paid a total of \$193.38 in co-pays for medications to [REDACTED] (Appellant Exhibit A)
9. In [REDACTED] 2021, [REDACTED] charged the Appellant \$7,378.00 total for that month for a Basic Residency Fee: Assisted Living-Daily (\$3,906.00); Service Package: Traditional II (\$2,604.00); and Medication: Traditional Med Level II (\$868.00). (Appellant Exhibit A)

10. In [REDACTED] 2021, the Appellant paid a total of \$235.46 in co-pays for medications to [REDACTED] (Appellant Exhibit A)
11. The state-funded CHCPE does not pay for room and board; the state-funded CHCPE program pays for some medical and home care services. (Department Representative Testimony)
12. On [REDACTED] 2021, the Department determined that the Appellant was financially eligible to begin category 2 services under the state-funded CHCPE effective [REDACTED] 2021. (Department Exhibit 5)
13. On [REDACTED] 2021, the Department issued a *Notice of Action* to the Appellant granting her state-funded CHCPE eligibility with a patient liability amount (or applied income) of \$0.00 for [REDACTED] 2021. (Exhibit 9)
14. On [REDACTED] 2021, the Department calculated the Appellant's patient liability amount (or applied income) as related to the state-funded CHCPE to equal \$1,562.48 per month, effective [REDACTED] [REDACTED] (Department Exhibits 6, 8, and 9)
15. The Department's patient liability amount (or applied income) calculated for [REDACTED] 2021 did not incorporate the Appellant's out-of-pocket costs for her [REDACTED] supplemental medical insurance policy, her co-pays for medication at [REDACTED] and the Medication: Traditional Med Level II services package through [REDACTED] (Hearing record)
16. In 2021, 100 percent of the annual Federal Poverty Level for an individual equaled \$12,880.00. 86 Fed. Reg. 7732.
17. Connecticut General Statutes § 17b-61 (a) provides: "The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, ... , provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension, or when the commissioner documents an administrative or other extenuating circumstance beyond the commissioner's control...."

On [REDACTED] 2021, the OLCRAH received the Appellant's [REDACTED] 2021 postmarked hearing request, which ordinarily would have required the issuance of this decision by [REDACTED] 2022. However, the Appellant's Attorney-in-Fact requested a three-day extension to the close of the hearing record and thereby extended the deadline for the issuance of this decision by three days. This hearing decision would have become due by [REDACTED] 2022. This final decision is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

“The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department.” Conn. Gen. Stat. § 17b-261b (a).

“The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program....” Conn. Gen. Stat. § 17b-262.

“The department’s uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; [Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A.2d 712 \(1990\)](#)).

In Connecticut, the Department had the authority to administer the Medicaid program and make regulations governing the same.

2. Section 17b-342 (a) of the Connecticut General Statutes creates the Connecticut home-care program for the elderly and authorizes the Commissioner of Social Services to administer the same. This section notes in part that the program’s purpose is “to prevent the institutionalization of elderly persons (1) who are recipients of medical assistance, (2) who are eligible for such assistance, (3) who would be eligible for medical assistance if residing in a nursing facility, or (4) who meet the criteria for the state-funded portion of the program under subsection (i) of this section.”

Section 17b-342 (i) (1) of the Connecticut General Statutes addresses the state-funded portion of the Connecticut home-care program for the elderly:

On and after July 1, 2015, the Commissioner of Social Services shall, within available appropriations, administer a state-funded portion of the program for persons (A) who are sixty-five years of age and older; (B) who are inappropriately institutionalized or at risk of inappropriate institutionalization; (C) whose income is less than or equal to the amount allowed under subdivision (3) of subsection (a) of this section; and (D) whose assets, if single, do not exceed one hundred fifty per cent of the federal minimum community spouse protected amount pursuant to 42 USC 1396r-5(f)(2) or, if married, the couple's assets do not exceed two hundred per cent of said community spouse protected amount....

Conn. Gen. Stat. § 17b-342 (i) (1).

The Department was authorized under Conn. Gen. Stat. § 17b-342 to administer the state-funded CHCPE program.

3. Section 17b-347e of the Connecticut General Statutes provides for the demonstration project for provision of subsidized assisted living services for persons residing in affordable housing.

The Appellant’s circumstances did not meet the criteria found at Conn. Gen. Stat. § 17b-347e, as she was not a participant in the demonstration project for the provision of subsidized assisted living services for persons residing in affordable housing.

4. Section 5005 A. of the Uniform Policy Manual (“UPM”) provides: “In consideration of income, the Department counts the assistance unit’s available income, except to the extent it is specifically excluded. Income is considered available if it is: 1. received directly by the assistance unit; or 2. received by someone else on behalf of the assistance unit and the unit fails to prove that it is inaccessible; or 3. deemed by the Department to benefit the assistance unit.” UPM § 5005 A.

Section 5050.13 A.1. of the Uniform Policy Manual provides that income from Social Security and Veterans’ Benefits is treated as unearned income in all programs.

“Payments received by the assistance unit from annuity plans, pensions and trusts are considered unearned income.” UPM § 5050.09 A.

The Department correctly determined that the Appellant’s gross monthly income from Social Security, Veterans’ Benefits, and private retirement pension are counted, unearned income for the purposes of the state-funded CHCPE.

5. Section 17b-342 (i) (2) of the Connecticut General Statutes provides:
Except for persons residing in affordable housing under the assisted living demonstration project established pursuant to section 17b-347e, as provided in subdivision (3) of this subsection, any person whose income is at or below two hundred per cent of the federal poverty level and who is ineligible for Medicaid shall contribute nine per cent of the cost of his or her care. *Any person whose income exceeds two hundred per cent of the federal poverty level shall contribute nine per cent of the cost of his or her care in addition to the amount of applied income determined in accordance with the methodology established by the Department of Social Services for recipients of medical assistance.* Any person who does not contribute to the cost of care in accordance with this subdivision shall be ineligible to receive services under this subsection. Notwithstanding any provision of sections 17b-60 and 17b-61, the department shall not be required to provide an administrative hearing to a person found ineligible for services under this subsection because of a failure to contribute to the cost of care.

Conn. Gen. Stat. § 17b-342 (i) (2). (emphasis added)

Section 8040.45 A. 1. of the Uniform Policy Manual (“UPM”) provides: “[E]ligible individuals who receive Connecticut Home Care for Elders under the state-funded portion of this program, are required to contribute to the cost of those services.”

In 2021, the Federal Poverty Level for an individual in 2021 equaled \$1,073.33 per month. [\$12,880.00 (annual FPL) divided by 12 months]

The Appellant’s gross monthly income of \$3,857.98 exceeded \$2,147.00, or 200 percent of the Federal Poverty Level for an individual.

As a state-funded CHCPE recipient whose income exceeded 200 percent of the Federal Poverty Level for an individual, the Appellant was responsible for contributing a portion of her monthly income—i.e., the patient liability amount (or applied income)—toward her cost of care.

6. “Beginning Date of Assistance.” The beginning date of assistance is the later of the following dates: 1. the date of application; or 2. the earliest date that the plan of care can be implemented after all eligibility requirements are met.” UPM § 8040.10 F.

The earliest date that the Appellant’s participation in a CHCPE plan of care could be implemented after all eligibility requirements were met was [REDACTED] 2021, the date that the Department granted the Appellant’s [REDACTED] 2021 CHCPE application.

7. “[A]n individual's countable income is determined using the rules found under Income Eligibility (cross-reference: 8040.40).” UPM § 8040.45 A.2.

“For a single individual, the gross income of the individual after any exclusions, is used solely to determine his or her contribution towards the cost of care (cross-reference: 8040.45).” UPM § 8040.40 B.1.

“[T]he monthly amount that an individual must pay is the lesser of the cost of the Connecticut Home Care Program for Elders services received by the individual or the amount calculated pursuant to the methodology established for recipients of the waiver (CBS) [Community Based Services] portion of this program (cross-reference: 5035.20 and 5035.25).” UPM 8040.45 A.3.

Section 5035.20 of the Uniform Policy Manual addresses Post-Eligibility Deductions for LTCF/CBS Units Without Community Spouses.

“Durational Use of Deductions.” The deductions described below are subtracted from income:

1. beginning with the month in which the 30th day of continuous LTCF care or the receipt of community-based services occurs; and
2. ending with the month in which the unit member is discharged from the LTCF or community-based services are last received.” UPM § 5035.20 A.

The Department correctly determined that the Appellant’s patient liability amount (or applied income) would begin [REDACTED] 2021, the first month in which the 30th day of receipt of community-based services under the state-funded CHCPE program.

8. Section 5035.20 C. of the Uniform Policy Manual provides the deductions for CBS units: The following monthly deductions are allowed from the income of assistance units receiving Community Based Services:

1. an amount to meet the basic community maintenance needs of the individual to the extent that it is equivalent to:
 - a. the MNIL for one person for those who are eligible under the model waiver; or
 - b. 200% of the Federal Poverty Level for those eligible under the PAS or DMR waiver;
2. an amount of income diverted to meet the needs of a family member who is in the community home to the extent of increasing his or her income to the MNIL which corresponds to the size of the family;

3. Medicare and other health insurance premiums, deductibles, and coinsurance costs when not paid for by Medicaid or any other third party;
4. expenses recognized as medical costs for which the recipient is currently liable, and which are not covered by Medicaid.

UPM § 5035.20 C.

The Appellant's correctly calculated patient liability amount (or applied income) with respect to the state-funded CHCPE equaled \$198.42, effective [REDACTED] 2021.

Calculation of [REDACTED] 2021 patient liability amount (or applied income) follows: \$3,857.98 (gross monthly income) minus \$2,147.00 (200% of the Federal Poverty Level) minus \$148.10 (Medicare B premium) minus \$261.00 [REDACTED] supplemental medical insurance premium) minus \$868.00 (Medication: Traditional Med Level I [REDACTED] [REDACTED] minus \$235.46 (medication co-pays to [REDACTED] [REDACTED]

On [REDACTED] 2021, the Department incorrectly calculated the amount of the Appellant's patient liability amount (or applied income) to equal \$1,562.48 effective [REDACTED] 2021.

9. Section 17b-342-3 (a)(11) of the Regulations of Connecticut State Agencies provides: "Reimbursement is not available for services arranged by program clients or representatives, access agencies, assisted living service agencies or service providers without prior approval by the department or department designee."

The Appellant is not eligible for reimbursement for her private payment for home care services in the period from [REDACTED] 2021 through [REDACTED] 2021, as those services would have been provided without prior approval by the Department.

DECISION

The Appellant's appeal is **GRANTED in part** and **DENIED in part** as follows:

- 1) The hearing officer finds that the Department correctly determined that the Appellant as a participant of the state-funded CHCPE had a patient liability amount (or applied income) of \$0.00 due in [REDACTED] 2021.
- 2) The hearing officer finds that Department incorrectly calculated the Appellant's patient liability amount (or applied income) due for [REDACTED] 2021.
- 3) The hearing officer finds that the Department correctly determined that it was prohibited from granting retroactive CHCPE coverage and/or services to [REDACTED] 2021 and/or reimbursing for privately paid home care services the Appellant received prior to the Department's [REDACTED] 2021 authorization to participate in the CHCPE program.

ORDER

1. The Department is ordered to update its records and notify the Appellant in writing that the Appellant's applied income with respect to the CHCPE program is as follows: \$198.42 in [REDACTED].
2. Within 21 calendar days of the date of this decision [REDACTED] 2022, documentation of compliance is due to the undersigned.

Eva Tar-electronic signature
Eva Tar
Hearing Officer

Pc: [REDACTED]
Stephen Percy, DSS-Central Office
Dorian Long, DSS-Central Office
Effie Morris-Ferguson, DSS-Central Office
Amelia Duarte, DSS-Waterbury
Judy Williams, DSS-Waterbury
Jamel Hilliard, DSS-Waterbury

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within **25** days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on § 4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within **45** days of the mailing of this decision, or **45** days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on § 4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45-day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with § 17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.